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This matter comes before me pursuant to the provisions of S.C. Code Ann. § 38-73-540(C) (2002). Section 38-73-540(C) provides:

It is essential for maintaining the viability of the assigned risk plan to establish and maintain rates at a level which permits the plan to operate as a self-funded mechanism. The plan administrator shall maintain necessary rate making data in order to permit the actuarial determination of rates and rating plans appropriate for the business insured through the plan. All assigned carriers shall report their experience on business written under the plan to the plan administrator in a format prescribed by the plan administrator. The plan administrator shall monitor rate adequacy and plan results and shall notify the director of the Department of Insurance in the event that excessive losses are indicated so as to enable the director to take corrective action.

This order supersedes and replaces the order by the Director of Insurance, acting with authority granted by S.C. Code Ann. § 38-73-1430, which directed that workers' compensation rate filings be treated differently for the voluntary and the assigned risk markets. As the voluntary loss costs serve as the basis for the rates in the assigned risk market, any approved revision to the current voluntary loss cost level would necessitate a similar change in the current assigned risk rate level. One of the purposes of this order is to establish a process that will synchronize rate or rule change(s) in the voluntary and assigned risk workers compensation insurance markets. This order implements corrective action so that assigned risk rates can be self-sustaining, and the assigned risk plan continues to provide a market of last resort for insureds who are unable to secure insurance in the voluntary market."

Generally, a request for insurance loss cost and assigned risk revisions are governed by S. C. Code Ann. § 38-73-910, which requires notice of a rate increase and a public hearing, if requested. In 1998, S.C. Code Ann. § 38-73-540(C) was amended to ensure assigned risk rates are self-sustaining. It also provides a mechanism for corrective action in the event current rates are not adequate. The fact that the mechanism under § 38-73-540(C) is a permissible alternative to the hearing procedure was recognized in *NCCI v. South Carolina Department of Insurance and Philip S. Porter*, ALJ Docket No. 00-ALJ-09-0687 (2001). In this decision, Judge Kittrell opined:

I find and conclude that the current predicament of assigned risk servicing carriers alluded to by several witnesses is not without redress. NCCI may file for new assigned risk rates and provide newer data which might substantiate the request for a rate increase. ***I also note that S.C. Code Ann. §38-73-540(C) provides an alternate and flexible remedy.*** Under that section, assigned risk carriers shall report their experience to the plan administrator who shall notify the

Department to enable the director of the Department to take corrective action, if necessary. *Nothing in this ruling precludes the servicing carriers from have their rate needs addressed in this way. (Emphasis added).*

Judge Kittrell's opinion recognized the authority of this Department to take corrective action pursuant to § 38-73-540(C) upon notice from the Plan Administrator that excessive losses exist within the assigned risk plan.

On **June 8, 2007**, the National Council on Compensation Insurance (NCCI), as the Plan Administrator for the State of South Carolina, forwarded to the Department notice that the assigned risk plan was experiencing excessive losses and as such are jeopardizing the ability of the plan to operate as a self-funded mechanism. That Notice is attached to this Order as Exhibit B.

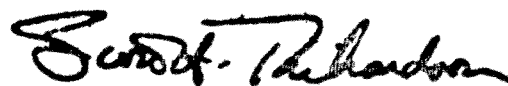
The Department has reviewed the notice and other supporting data received from the Plan Administrator. I hereby conclude that corrective action is necessary to ensure that the assigned risk plan is self-funded and self-sustaining in accordance with the requirements of § 38-73-540(C).

IT IS THEREFORE ORDERED that the procedures set forth in §38-73-540(C) shall be the procedure for effecting rate or rule changes within the assigned risk plan so that rates within that market continue to be self-sustaining. Changes shall become effective upon approval of a change within the voluntary market. However, nothing in this Order shall preclude the Department from making loss costs or other changes should such change prove necessary for the rates in the assigned risk plan to be self-sustaining, not inadequate, excessive or unfairly discriminatory.

IT IS THEREFORE ORDERED that the loss costs for the assigned risk plan shall be the loss costs approved for the workers compensation insurance voluntary market by the Administrative Law Court signed **May 22, 2008**.

IT IS FURTHER ORDERED that in calculating the revised rates and rating values for South Carolina's assigned risk market, the loss cost multiplier of **2.176 shall be reduced by 5%, resulting in a loss cost multiplier of 2.067 and applied to** the South Carolina voluntary market loss costs. This shall become effective upon approval of any change in loss costs in the voluntary market.

AND IT IS SO ORDERED.



Scott H. Richardson  
Director

June 2, 2008 at  
Columbia, South Carolina

June 8, 2007

Honorable Scott H. Richardson, Director  
South Carolina Department of Insurance  
Capitol Center  
1201 Main Street, Suite 1000  
Columbia, South Carolina 29201

**RE: South Carolina Assigned Risk Rates**

Dear Director Richardson:

I am providing, pursuant to Title 38, Chapter 73, Section 540 (C) of the South Carolina Code of Laws, 1976, as amended, a formal notice that excessive losses are indicated in the South Carolina Assigned Risk Plan and as such are jeopardizing the ability of the plan to operate as a self-funded mechanism. This notice is provided by the National Council on Compensation Insurance Inc., ("NCCI") in its role as plan administrator of the South Carolina Assigned Risk Plan.

In an effort to enable you to take appropriate corrective action, NCCI is providing to you information regarding the South Carolina Assigned Risk Plan. For your convenience I have summarized the information below.

- In order to move toward achieving the self-sustaining requirement of § 38-73-540(C) and to ensure the stability of the assigned risk workers compensation market, it is necessary to revise the current assigned risk rate level in effect since December 1, 2006. As the voluntary market loss costs serve as the basis for the rates in the assigned risk market, all else equal, any approved revision to the current voluntary loss cost level would also support at least a similar change to the current South Carolina assigned risk rate level.
- After reviewing the adequacy of the current South Carolina assigned risk loss cost differential (equal to 40.4%) in effect since February 15, 2005, it is the opinion of NCCI that no revision to this figure is necessary.
- NCCI calculated an assigned risk loss cost multiplier (LCM) incorporating the (i) actual calendar year 2006 Plan Administration and Other Expenses and (ii) revised weighted-average of successful Assigned Risk Servicing Carrier Allowance (SCA) bids, effective January 1, 2007. Based on this calculation, and no change to the current assigned risk differential, a decrease of 10.3% to the current assigned risk loss cost multiplier results.

Accordingly, NCCI requests that the South Carolina Department of Insurance take corrective action in accordance with and pursuant to Title 38, Chapter 73, Section 540 (C) of the South Carolina Code of Laws.

In the event you require additional information please do not hesitate to contact me.

Sincerely,



Amy Quinn  
State Relations Executive